

1 IN THE HOUSE

BY MR. MCCUTCHEON
BY REQUEST

HOUSE BILL NO. 153

2
3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY-SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to procedures for dis-
7 missal, demotion, or reduction in salary, or
8 other penalties; setting forth the rights
9 and liabilities of school boards and the
10 board of education and of educational
11 employees regarding such procedures; repeal-
12 ing Sec. 37-2-7 (d), ACLA 1949; and declar-
13 ing an emergency."

14 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

15 Section 1. DEFINITIONS. Words and phrases occurring in this
16 Act which are derived from words and phrases defined in this
17 Section have derivative meanings in accordance with grammatical
18 usage. As used in this Act:

19 (a) a superintendent, principal, supervisor, and class-
20 room teacher and any other professional employee required to hold
21 a certificate from the Territorial department of education shall
22 be deemed to be an "educational employee" within the meaning of
23 this Act;

24 (b) "educational board" means board of education,
25 school board, or any other instrumentality which, on or after the
26 effective date of this Act, has the authority to engage an
27 educational employee to serve in a public school of this Territory;
28 and shall include the Territorial Board of Education, and the
29 Commissioner of Education when performing duties delegated by said

Board;

(c) "grosso inefficiency" means the unintentional or intentional performance of one's legitimate duties in a manner which establishes one's incompetence with respect to (1) one's present position and (2) any vacant position at the disposal of the board concerned which one is properly qualified, and willing to accept;

(d) "inefficiency" means the unintentional or intentional performance of one's legitimate duties in a manner which establishes one's incompetence with respect to (1) one's present position and (2) any vacant position at the disposal of the board concerned, of as high a rank and carrying as high a salary, which one is properly qualified, and willing to accept;

(e) "legitimate duties" means reasonable duties imposed without discrimination because of race, creed, religion, marital status, organizational affiliation or activity, or the exercise of any civil or other right which may be exercised lawfully by citizens generally;

(f) "properly qualified" means qualified by reason of certification;

(g) "immorality" means the commission of any act which involves moral turpitude and which, if committed by any citizen generally, would be punishable by law.

(h) "demote" means transfer to a position carrying a lower salary or compensation, and/or lower the rank of, whether by transfer or otherwise;

(i) "reduce the salary of" means reduce the compensation of except where such reduction is incident (1) to a leave of absence (2) to demotion, or (3) to a fine or other pecuniary

penalty imposed because of the alleged character of the employee's service;

(j) "penalize" means affect injuriously, either absolutely or in a relation to some other employee of the same board who has the same status.

Sec. 2. CONTRACTS. (a) Every educational board shall enter into contract with the educational employees who, on the effective date of this Act, are serving in its employ in the public schools of this Territory, at or before the beginning of the first school year beginning after such date and shall enter into contract with all other educational employees who may serve in its employ in the public schools of this Territory or before the beginning of such service. Contracts made under the provisions of this paragraph shall become effective on or before the final dates by which they must be executed.

(b) The said contracts shall be in writing, in triplicate, on uniform blanks furnished by the Territorial Commissioner of Education and shall be executed on behalf of the educational board by its chairman and secretary and signed by the educational employee. The secretary shall furnish one copy of the contract to the educational employee and a second copy to the Commissioner of Education, who shall file the said copy among the records of his office; and the said secretary shall file the third copy among the records of the educational board.

(c) The said contracts shall contain the following statements and forms of statement, and no others:

"It is hereby agreed by and between....., the employee, and, the employer, that the said employee, beginning19....., shall serve in

the employ of the said employer and its successors for a term of school months, the number of school months in the school year, for an annual compensation of \$..... payable in equal monthly or semi-monthly installments during the said school months, less the contributions required by law to be paid to the Teachers' Retirement Fund and less other deductions required by law and not made for reasons of economy.

"It is further agreed by the parties hereto that this contract shall continue in force from year to year, until terminated in accordance with the provisions of the Fair Dismissal Act of 1955, and any amendments thereto prior to the date of this agreement, and that until such termination each of the said parties shall enjoy the rights and shall assume the obligations therein provided, none of which rights or obligations may be waived, either orally or otherwise.

"Nothing in this contract shall prevent the raising of the compensation of the said employee above, or the reduction of the term of service of the said employee below, the compensation and term of service specified herein.

"This contract is executed this day of 19...."

(d) No contract made under the provisions of this Section shall be terminated except by the dismissal of the educational employee in accordance with the provisions of this Act, or by the resignation, retirement, or death of the educational employee.

Sec. 3. DISMISSAL AND DEMOTION. (a) Except as provided in paragraph (b) of this Section, no educational employee serving in a public school of this Territory shall be dismissed for any

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cause other than physical disability, mental disability, immoral-
ity, and/or gross inefficiency and no such employee shall be
demoted for any causa other than inefficiency. The specific
nature of any such demotion shall be based solely upon the specific
nature of the inefficiency.

(b) Any educational employee serving in a public school
of this Territory may be dismissed or demoted if such action is
necessitated by the elimination of a position and if such elimi-
nation is required, or rendered advisable, by a substantial de-
crease in school enrollment and/or by a change in school curri-
culum or school organization which is demonstrably desirable for
reasons other than reasons of economy. Such dismissal or demotion
shall be governed by the following provisions.

(1) The educational employee last engaged by the
board concerned, and performing the type of service being
discontinued by the elimination of the position, shall be
the particular employee to be ordered dismissed or demoted,
but before such employee is so ordered, he shall have been
offered the opportunity to accept any vacant position at the
disposal of the board, for which he is properly qualified.

(2) Educational employees who have been ordered
dismissed or demoted under the provisions of this paragraph
shall be offered the opportunity, during the period of such
dismissal or demotion, or impending dismissal or demotion,
to accept any vacant position at the disposal of the board
concerned, and for which they are properly qualified, in the
inverse order in which their dismissals and demotions, taken
together, were ordered; Provided, that the opportunity to
accept such position shall be accorded first as stated in

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provision (1) of this paragraph.

(3) No educational board shall engage any person who is not already serving in its employ in a public school of this Territory to fill any vacant position at its disposal if there are any educational employees who have been, or who are about to be, ordered dismissed or demoted by the board under the provisions of this paragraph, and who have not been restored to their original status, who are properly qualified for, and willing to accept, such position.

(4) Every educational employee whose dismissal or demotion is ordered under the provisions of this paragraph shall be given by the board concerned, prior to the effective date of such dismissal or demotion, a letter of honorable dismissal or honorable demotion, as the case may be.

(5) No educational employee whose dismissal under the provisions of this paragraph has become effective shall be prevented from engaging in other occupation during the period of such dismissal.

(6) Every educational employee whose dismissal or demotion is ordered under the provisions of this paragraph shall be given by the board concerned, prior to the effective date of such dismissal or demotion, sixty (60) days salary at the per diem rate.

Sec. 4. REDUCTION OF SALARY OR OTHER PENALTIES. (a) No educational employee serving in a public school of this Territory shall have his salary in any year reduced below his salary in the immediately preceding year for any cause and no such employee shall be suspended without pay, fined, or penalized in any manner whatever not hereinbefore considered except for a just cause;

1 Provided that penalizing an employee under provision (g) of
2 Section 5 of this Act shall be deemed to be for a just cause; and
3 Provided further that penalizing an employee because of the fail-
4 ure to perform duties which are not legitimate duties, or because
5 of race, creed, religion, marital status, organizational affili-
6 ation or activity, or the exercise of any civil or other right
7 which may be exercised lawfully by citizens generally, shall not
8 be deemed to be for a just cause. The specific nature of any
9 penalty imposed under the provisions of this paragraph because of
10 the alleged character of the employee's service shall be based
11 solely upon the specific nature of the deficiency.

12 (b) If any educational employee serving in a public
13 school of this Territory shall be required to serve in any year
14 a greater total number of work-hours than he served in the
15 immediately preceding year, his salary or compensation shall be
16 raised at least proportionately to such increase. For the pur-
17 poses of this paragraph, the computation of the time served by an
18 employee shall not be affected by suspensions and/or absences.

19 Sec. 5. INSTITUTION OF PROCEEDINGS. Before any educational
20 employee serving in a public school of this Territory shall be
21 dismissed, demoted, or penalized in any other manner whatever,
22 proceedings against such employee shall be instituted in accord-
23 ance with the following provisions:

24 (a) Any member or members of the administration con-
25 cerned shall file with the secretary of the said board a written,
26 signed, duly detailed, and duly verified statement, in duplicate,
27 setting forth the alleged facts in the case. The said secretary
28 shall bring the statement to the attention of the board within
29 seven days after its receipt.

1 (b) The said board, after making such inquiry and in-
2 vestigation as it may deem necessary, shall either dismiss the
3 matter or order such penalty as it may consider justified under
4 the terms of this Act.

5 (c) When serving its order upon the employee, the board
6 shall enclose therewith (1) a copy of this Act, (2) a copy of
7 the statement filed with the secretary of the board, (3) a written
8 signed, and duly detailed report by the board of its findings in
9 the matter, and (4) a notice informing the employee exactly when,
10 with whom, and in what manner, under the terms of this Act, the
11 employee must file a request for a hearing if the order is to be
12 set aside or amended.

13 (d) Except where an employee is charged by a board
14 with intentionally performing his duties unsatisfactorily, no
15 educational board shall serve its order for the dismissal of an
16 employee because of gross inefficiency, or for the demotion of an
17 employee because of inefficiency, unless at least ninety school
18 days prior thereto the said employee shall have received from the
19 board a written warning specifying the nature of such faults to
20 date with such particularity as to furnish him an opportunity to
21 correct them, and unless at the request of the employee, and if
22 such transfer is practicable, he shall have been granted the
23 opportunity to serve at least ninety school days of the inter-
24 vening period under another superior officer; Provided that for
25 employees holding, or qualified to hold, provisional certificates
26 only, each period of ninety school days specified in this pro-
27 vision shall be reduced to a period of thirty school days.

28 (e) No order of any board shall be served upon any
29 employee except during a school year.

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(f) No order of any board shall become effective while the employee concerned has the right under the terms of this Act to have the order set aside or amended, and no order of dismissal or demotion under paragraph (b) of Section 3 of this Act shall become effective except at the close of a school year and after not less than sixty days' written notice to the said employee.

(g) Any employee against whom charges have been filed with the secretary of an educational board, which, if wholly or partly correct, warrant the dismissal of the employee because of immorality, mental disability, or gross inefficiency due to unsatisfactory service, or the demotion of the employee because of inefficiency due to unsatisfactory service, may be suspended, if the board deems such action advisable, immediately after such charges have been brought to its attention; Provided that pending the board's order in the matter, the pay of the employee shall not be affected. Should the board, on the basis of such charges, decide to order the dismissal or demotion of the employee, it may suspend the said employee without pay immediately upon serving such order, provided that if the said employee is exonerated of the charges by the final determination of the matter, he shall be entitled to all salary or compensation accruing during the period of such suspension.

(h) No notice of suspension issued under provision (g) of this Section shall be deemed an "order" as the term is used in this Act.

Sec. 6. RIGHT TO, AND ARRANGEMENT OF, HEARING. (a) After receiving an order of an educational board, the employee concerned shall have the right to request a hearing, at the option of the employee before the said educational board, for the purpose of

having the said order set aside or amended, but such right shall expire ten days after the receipt of the order and the order shall thereupon become final, Provided that no such right shall expire within sixty days after this Act takes effect.

(b) The educational board, immediately after receiving such request, shall set the exact time and place for the hearing and thereupon shall give notice to the employee and the complainant, enclosing therewith a copy of its rules and regulations governing the conduct of its hearings. The time fixed for the hearing shall be not less than ten days nor more than fifteen days after such notification may be expected to be received and the place fixed shall be a point reasonably convenient for the employee concerned. The hearing shall be held at the time and place so fixed unless otherwise agreed to by both the employee and complainant. If the cases of two or more employees are deemed by the educational board to be essentially similar, they may be tried at the same hearing.

Sec. 7. CONDUCT OF HEARING. The hearing before the educational board shall be conducted in accordance with the following provisions:

(a) The hearing shall be public unless otherwise requested by the employee.

(b) The employee and the complainant shall each have the right to be heard in person, to be represented by freely selected counsel, to call witnesses, to examine and cross-examine such witnesses, to inspect all documentary evidence produced, and to present such other evidence as may be relevant to the matter under inquiry, Provided that the burden of proof shall be upon the complainant.

1 (c) The educational board shall have the power to sub-
2 poena witnesses and documentary evidence and shall exercise such
3 power at the request of either side. If any person shall refuse
4 to appear and testify in answer to such subpoena, either side may
5 petition the appropriate court setting forth the facts, which
6 court shall thereupon issue its subpoena commanding such person
7 to appear and testify before the said educational board. Any
8 failure to obey such order of the court may be punished by the
9 said court as contempt thereof.

10 (d) All testimony shall be taken under oath or affirma-
11 tion, to be administered by any member of the educational board
12 under the authority hereby granted. Any person making a false
13 oath or affirmation shall be guilty of perjury and punished
14 accordingly.

15 (e) All action taken by the educational board shall be
16 by a majority vote of all the members thereof, to be recorded by
17 roll-call.

18 (f) The education board, at its expense, shall employ
19 a competent and disinterested stenographer to make a literal record
20 of the full proceedings at the hearing, which record shall include
21 all evidence both oral and documentary and the decision and order
22 of the educational board. Such stenographer, within five days
23 after the decision and order have been issued, shall send the
24 employee and the complainant one copy each of a transcript of such
25 record, which shall be certified by the stenographer and by the
26 chairman of the educational board to be complete and correct.

27 (g) Unless otherwise agreed to by both the employee
28 and the complainant, the hearing shall be concluded within twenty
29 days after its commencement.

1 (h) After each side has presented its case, as herein-
2 before provided, and after a full and impartial consideration of
3 the evidence adduced, the educational board, on the basis of such
4 evidence and within ten days after the conclusion of the hearing,
5 shall render a decision in writing, setting aside, amending in a
6 specific manner, or sustaining the order in dispute. The educa-
7 tional board thereupon shall serve its order upon the employee
8 and the complainant (or upon the employee).

9 Sec. 8. RIGHT TO, AND ARRANGEMENT OF APPEAL. (a) After
10 receiving the order of the educational board, the employee and/or
11 the complainant shall have the right to request a hearing before
12 the District Court in which the place of employment of the
13 employee is located, for the purpose of having the said order set
14 aside or amended, but their respective rights shall expire ten
15 days after the receipt of the order, and if, prior to such date,
16 neither has requested the hearing, the order shall thereupon be-
17 come final. The side requesting such hearing shall, when making
18 such request, send copies thereof to the opposing side.

19 (b) The said court, after receiving such request,
20 shall set the exact time for the hearing, which hearing shall be
21 held, upon due notice to the parties concerned, at the earliest
22 time possible and shall take precedence over all other cases,
23 except older matters of the same character and except matters to
24 which special preference may be given by law; Provided that such
25 hearing shall not be held within ten days after the court receives
26 the said request. If the cases of two or more educational
27 employees are deemed by the court to be essentially similar, they
28 may be tried at the same hearing.

29 Sec. 9. CONDUCT OF APPEAL. The matter before the court

1 shall proceed as other civil actions therein, and, upon the con-
2 clusion of the hearing, the court shall render whatever decision
3 it considers just, setting aside, amending in a specific manner,
4 or sustaining the order in dispute. If it has been so specified
5 in a request for the said hearing, such hearing shall be de novo.

6
7 Sec. 11. RESIGNATIONS. No educational employee serving in
8 a public school of this Territory shall resign, except by mutual
9 consent, without giving a written notice to the board concerned
10 at least sixty days prior to the effective date of such resigna-
11 tion, but resignation in any other manner shall none the less
12 terminate any contract between the said employee and the said
13 board, without penalty to either party, which may have been
14 executed under the terms of this Act.

15
16 Sec. 12. EDUCATIONAL EMPLOYEES ON LEAVE OF ABSENCE. All
17 the provisions of this Act applying to educational employees ser-
18 ving in the public schools of this Territory shall be construed
19 to apply both to educational employees on leave of absence from
20 such service and to educational employees in active service.

21
22 Sec. 13. SENDING OF WRITTEN COMMUNICATIONS. All orders,
23 reports, and other written communications provided for under the
24 terms of this Act shall be sent to the parties concerned at
25 their last known addresses and by registered mail, with postage
26 prepaid. Except where the contrary is stated in this Act, such
27 communications, if intended for boards and commissions, shall be
28 addressed to the respective secretaries thereof, and if intended
29 for courts, shall be addressed to the respective clerks thereof.
30 The receipt of such communications by such individuals shall
31 constitute receipt by the board, commission, or court concerned.

32
33 Sec. 14. CHANGES IN THE PERSONNEL OF EDUCATIONAL BOARDS.

1 None of the rights or privileges granted to educational employees
2 under the terms of this Act shall be impaired in any way by the
3 consolidation of educational boards or by any other changes in
4 their respective personnel.

5 Sec. 15. INCONSISTENT LAWS. All laws and parts of law
6 inconsistent with the provisions of this Act are hereby repealed.

7 Sec. 16. INDEPENDENCE OF PROVISIONS. If any provisions of
8 this Act, or the application thereof to any person or circumstance,
9 shall be adjudged invalid or unconstitutional, such adjudication
10 shall not invalidate, impair, or affect the remainder of this
11 Act, or the application of such provision to any other person or
12 circumstance.

13 Sec. 17. SHORT TITLE. This Act shall be known and may be
14 cited as "The Fair Dismissal Act of 1955."

15 Sec. 18. REPEALER. Section 37-2-7 (d), ACLA, 1949, is
16 hereby repealed.

17 Sec. 19. EMERGENCY. An emergency is hereby declared to
18 exist and this Act shall take effect immediately upon its passage
19 and approval, or upon its becoming law without such approval.
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